

05 CV 9780

CIVIL RIGHTS COMPLAINT
42 U.S.C. § 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUDGE MUKASEY
05 5850

PATRICK R. HARRISON, a/k/a Peter Thomas
ID# 9000500238

Plaintiff,

JURY TRIAL DEMAND
YES X

-against-

BLOOM, M.J.

CITY OF NEW YORK,
NEW YORK CITY POLICE DEPARTMENT, ET. AL.,
P. O. DAVID TERRELL (77th Precinct),
"ARRESTING OFFICER" (Red-haired/77th Pct),
P. O. ROBERT L. SIMMS (77th Precinct),
P. O. Sgt. FRANQUI (77th Precinct),
ADA MINERVA JOHN-STULL,
ADA VALERIE L. FORBES,
DA CHARLES J. HYNES,
LEGAL AID SOCIETY,
NICOLE M. MULL, Attorney,
SPENCER A. LEEDS, Esq.,
SHERYL L. PARKER, J.S.C.,
ADA MARIA SCIORTINO,
MR. GORFINKEL, Attorney,

Doc # 2

Defendants.

SD. OF N.Y.
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I. Previous Lawsuits:

There have been no previous lawsuits filed in state or federal court dealing with the same facts involved in this action or otherwise relating to imprisonment.

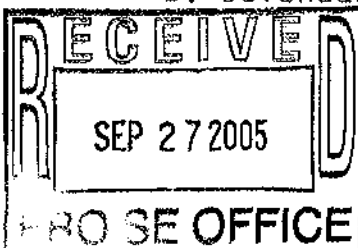
II. Place of Present Confinement:

Otis Bantum Correction Center, [Rikers Island]
1600 Hazen Street, E. Elmhurst, NY 11370

III. Parties:

A. Plaintiff: Partick R. Harrison, A/K/A Peter Thomas
#900-05-00238; Otis Bantum Correction Center
1600 Hazen St, E. Elmhurst, NY 11370
Residence: 526 Ralph Avenue, Brooklyn, NY 11233

B. Defendants: 1) City of New York, NYC Corp. Counsel
100 Church St, New York, NY 10007
2) New York Police Department
1 Police Plaza, New York, NY 10038



- 3) David Terrell, Officer, N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY
- 4) Arresting Officer, "Red-Head"
(Gang, Gun, and Drug Unit), N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY
- 5) Robert L. Simms, Officer, N.Y.P.D.
Shield No. 13057, 77th Precinct
127 Utica Avenue, Brooklyn, NY
- 6) Legal Aid Society
Criminal Defense Division
111 Livingston St., Brooklyn, NY 11201
- 7) Nicole M. Mull, Attorney
Legal Aid Society
111 Livingston St, Brooklyn, NY 11201
- 8) Spencer A. Leeds, Esq.
401 Broadway, Suite 1212
New York, NY 10013
- 9) Mr. Gorfinkel, Attorney
Legal Aid Society
111 Livingston St, Brooklyn, NY 11201
- 10) Sheryl L. Parker, J.S.C.
Kings County Supreme Court, Part 30
320 Jay Street, Brooklyn, NY 11201
- 11) Minerva John-Stull, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 12) Maria Sciortino, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 13) Valérie L. Forbes, ADA
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 14) Charles J. Hynes, District Attorney
Kings County Office of the DA
Renaissance Plaza
350 Jay Street, Brooklyn, NY 11201
- 15) Sgt. Franqui, Officer, N.Y.P.D.
77th Precinct
127 Utica Avenue, Brooklyn, NY

IV. Statement of Claim:

1. City of New York: Liability for the illegal acts of all New York City employees or those on the City payroll. For false arrest, malicious prosecution, and intentional affliction of emotional distress.

2. New York Police Department: The 77th Command did not follow standard operating procedures with respect to alleged "burglary sting operation." The Police deviated so egregiously from acceptable police activity as to demonstrate an intentional or reckless disregard for proper procedures. No verifiable sting operation existed in this case where police is only attempting to cover up an illegal entry, search, seizure, and arrest of plaintiff. (42 USC §§ 1983, 1985, and 1981). NYPD policy makers have installed a policy whereby it has permitted its officers to conduct investigations, ie, "sting operations" that target minority communities, primarily consisting of people of Black and Hispanic Origin, whereby they approach people randomly and without probable cause. Their approach is to offer for sale some item of value for which they are willing to take a ridiculously low sum of money. After said item is purchased the police would return, arrest the buyer for "(alleged) stolen property", illegally, search his home, and file any other charges they deem appropriate. This is Racial Profiling.

3. Officer David Terrell: Officer approached the plaintiff, whom he told that he was "hungry" and that he needed to sell his X-Box in order to buy food for himself and his children. Plaintiff, finally relented after such persuasion, purchasing the used X-Box for \$31. Plaintiff was thereby entrapped by Officer Terrell who was using the NYPD-directed policy of "racial profiling" as a prelude to violating plaintiff's civil rights, ie., illegal entry, search, seizure and arrest. Afterwards, Officer Terrell offers no material evidence to substantiate a claim of probable cause by saying, merely that he repeatedly told plaintiff, a complete stranger, that he was selling a used "solen X-Box," which he stole from an apartment.

4. "Arresting Officer" (Red-head): This officer, with the distinct features of a natural red-head, whom I will never forget and can easily identify, was the officer who came to my home, requested to speak with me, forced entry (backed up by at least 4 or 5 other officers) at approximately 1:40pm. They searched my house, including my basement apartment, immediately. This officer handcuffed me, put me in the police car and rode adjacent to me to the 77th Precinct and took part in the two interrogations. This officer did violate plaintiff's civil rights in entering, searching, seizing property at 526 Ralph Ave., and illegally arresting plaintiff thereat and did conspire to cause his unlawful imprisonment and malicious prosecution, and then removing himself from the case entirely.

5. Officer Robert L. Simms:

Incorrect statements made by Simms in Warrant Application materially mislead magistrate and did deprive himself of qualified immunity where magistrate would not have found probable cause had factual errors been corrected. Federal Procedure Law: 2991.5

a) he included the uncorroborated and unsubstantiated hearsay testimony of Officer David Terrell that defendant was informed that X-Box was "stolen".

b) his 7:38PM Warrant Application, 41/2005, was deliberately

made with false testimony and with reckless disregard for the truth, whereby he gave the magistrate the false impression that defendant was at large and in possession of the X-Box, while at 526 Ralph Avenue. Material omissions to the fact that defendant had been arrested since 1:40pm (six hours earlier), inside the location, would have demonstrated that police had already illegally entered, searched, seized X-Box (occupying the location from within), and arrested the defendant. Applying "linked-in information," after the fact, that defendant was arrested and remained in custody contradicted the warrant altogether [U.S.C.A. Const. Amend. 4; 42 USCA § 1983]. He failed to mention to the magistrate his claim of being defendant's arresting officer, which the ADA had held him up to be. "If no police officer of reasonable competence would have requested the warrant, i.e., his request is outside the range of professional competence expected of a police officer, and magistrate [judge] issues warrant in such case, his action is not just a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty; officer cannot excuse his own default by pointing to greater incompetence of magistrate", Malley v. Briggs, 106 S. Ct. 1092; Civil Rights Law: 214(6).

Officer Robert L. Simms, as deponent in the felony complaint; #2005KN008517, continued knowingly, deliberately and with reckless disregard of the truth, to make false statements and material omissions were easily disproven by the police arrest and complaint reports. Though plaintiff had been 'arrested' at 1:40 pm, at 8:50 pm, "Informant observed the defendant in possession of an excess of 400 packages for cigarettes that did not bear the required New York State and New York City Tax stamps, in that informant recovered those packages from the above location." The blatant falsity of this felony complaint/warrant application was an act of egregiously, intentionally and recklessly done to cause plaintiff severe emotional distress. See Carter v. District of Columbia, 795 F.2d 116, Plaintiff's version of the facts, corroborated by the police/complaint reports and NYC Interview Report (Arrest #610282) contradicted officer's accounts, which were fraught with discrepancies, inconsistencies and material omissions and are sufficient evidence to raise issue in Civil Rights action against purported arresting officer and other officers who were involved in Fourth Amendment and various other violations of plaintiff's constitutional rights. See Borunda v. Richmond, 885 F.2d 1384. The doctrine of qualified immunity does not apply if reasonable officers would have known they were violating clearly established constitutional rights. See White v. Pierce County, 797 F. 2d 812, 815(9th. Cir. 1986). In this case every officer knew that they were in breach of plaintiff's constitutional rights (4,14 Const. Amend.). "Malice is inferred if defendant acted with a reckless or grossly negligent disregard of plaintiff's rights." Malicious Prosecution Law No. 29, See Harris v. State, 756 NYS. 2d. 302 (A.D. 3Dept. 2003).

Officer Simms' entire testimony is false because he is not the arresting officer and was handed the case by his superiors to confuse and confound any viable defense from the defendant. Police Officer Simms did participate in the beating of plaintiff at the 77th Precinct on February 9, 2005 at about 10pm, with attempting to coerce plaintiff to sign a consent to search his

attempting to coerce plaintiff to sign a consent to search his basement apartment and first floor entryway.

6. P.O. Sgt. Franqui, of the 77th Precinct in Brooklyn, did violate plaintiff's civil rights in entering, searching, seizing property at 526 Ralph Ave., and illegally arresting plaintiff, threat and did conspire to cause his unlawful imprisonment, malicious prosecution by approving the switch of arresting officers from the "red-haired" detective to Officer Robert L. Simms.

7. ADA Minerva John-Stull, did conspire with members of the NYPD and Kings County DA's office, to violate plaintiff's civil rights, by intentionally preparing and filing a forged and invalid instrument of search warrant application / search warrant (41/2005) that was both facially and factually invalid, to cause plaintiff's unlawful imprisonment and malicious prosecution.

8. ADA Maria Sciortino, did, while in possession of Search Warrant application / Search Warrant (#41/2005) and felony complaint (#2005KN008517), and NYPD arrest/complaint reports (#K05610282), did conspire to violate plaintiff's civil rights by permitting members of the NYPD to intentionally, willfully, and knowingly give false testimony before a grand jury and thereby further contribute to plaintiff's unlawful imprisonment and malicious prosecution. Ms. Sciortino did further deny plaintiff's request to testify and call other witnesses to testify before said Grand Jury in February, in support of his claims, after Nicole Mull provided written request of plaintiff's behalf.

9. ADA Valérie L. Forbes, in the face of the above-named evidence, possessed and later presented by her, did conspire to violate plaintiff's civil rights by admitting the same and seeking to cover up the mountain of contradictory evidence by offering a new and non-existent felony complaint (#2005KN022260), vindictively attempting to submit new charges (110/125.25) and bail (\$100,000); resubmitting felony charges to a new grand jury on July 18, 2005 after a June 20, 2005 dismissal; and lying, in court, on August 8, 2005 about making a proffer of 'time-served' with the return of computer equipment on June 20, 2005, all in an attempt to continue plaintiff's unlawful imprisonment and her office's malicious prosecution.

10. Charles J. Hynes, being the elected District Attorney of Kings County, is ultimately responsible for the illegal acts committed by his assistants and for permitting prosecution of defendant, whose crime was an invention of the police from the beginning and for condoning the "policy of racial profiling" in his office's prosecution of such defendants without probable cause. He, thereby did cause plaintiff's unlawful imprisonment and malicious prosecution in violation of his civil and constitutional rights. The DA's Office lacked probable cause to continue with prosecution, but persisted with actual malice. Civil Rights Law No. 192; 42 USCA§1983.

11. **Nicole M. Mull**, attorney for the Legal Aid Society, did violate plaintiff's civil rights by not representing plaintiff as required by law and by ignoring evidentiary facts of a case that required immediate dismissal and withholding such evidence that was in her possession and, in a flagrant display of a "conflict of interest," did try to obtain a "time served" plea on or about February 17, 2005, when she told the defendant that "the judge in your case is willing to give you time served only if you do not go before the Grand Jury." When I insisted on testifying before the Grand Jury, Ms. Mull failed to show up on the appointed day(2/18/05), as she was "absent due to illness."

Ms. Mull was never heard from again, despite defendant's numerous attempts to make contact with her, even through this institution's legal aid counsel.

As of April 5, 2005, plaintiff's arraignment on the indictment, another Legal Aid Counsel informed plaintiff that "Ms. Mull knows you're upset and she apologizes, though she is still ill and cannot attend." Ms. Mull's 'mysterious' illness apparently occurred since our last meeting(2/17/05) and extended to, at least April 5, 2005. I do not believe that Ms. Mull was sick and simply recused herself, because she could not bear her role in violating her client's civil and constitutional rights and the attorney's code of conduct.

In denying plaintiff's CPL 190.50, the People intimated that "it appears that [plaintiff] had forged Nicole Mull's signature to the WAIVER OF IMMUNITY." A waiver she had signed and gave to him on 2/17/05 and asked that he return with the following day for the scheduled Grand Jury hearing of February 18, 2005. Ms. Mull, nor the Legal Aid Society, came forward to rebut such allegation or to defend plaintiff in the face of a denial of his legal right to testify and to have eyewitnesses testify before said Grand Jury.

12. **Mr. Gorfinkel**, supervising attorney for the Legal Aid Society, waived plaintiff's right to testify before the Grand Jury and did not further his continued request to allow for his obvious intent to testify and request for his witnesses to testify, as well. Mr. Gorfinkel did lie as to the nature of Ms. Mull's sudden disappearance "due to illness," when in fact the true nature of her absence was due to her unwillingness (possibly) to participate in the Mockery of proceedings being perpetrated against her client, the otherwise malicious prosecution, in which he readily conspired through his action or inaction.

13. **The Legal Aid Society**, having under their employ, Ms. Nicole Mull and Mr. Gorfinkel, is liable for their actions and thereby did cause violations of plaintiff's civil rights and otherwise unlawful imprisonment and malicious prosecution.

14. **Spencer A. Leeds**, 18B Legal Advisor for plaintiff, has provided no legal advice whatsoever to plaintiff, since the advent of his paid appointment (April 5, 2005) and whose sole aim has been to help the DA's office in undermining the Defense. His entire impetus has been on getting plaintiff to plead guilty to something, despite his possession of the overwhelming factual

and material evidence to the contrary and of evidence that members of the NYPD and DA's Office are involved in a cover-up, which violated plaintiff's civil and constitutional rights leading to his unlawful imprisonment and malicious prosecution.

Mr. Leeds, on June 20, at the urging of the People, proffered a plea of time served, with the return of computer equipment--A fact which was vehemently denied by ADA Forbes before a substitute judge on August 8, 2005. Mr. Leeds fled the courtroom without so much as a rebuttal to her denials or to his undeniable role, which would have supported plaintiff's claim. It thus stands to reason that he has no interest in his 'client's' welfare; but rather, has conflicting loyalties to the DA's Office. A February 2005 article in the American Lawyer, titled "double agent" by Andrew Longstreth, points out that "defense lawyers have become deputy prosecutors." Mr. Leeds has indeed verified this position.

15. **Sheryl L. Parker**, Justice of the Supreme Court, did overlook every iota of factual material evidence; false, contradictory, malicious, and flagrant acts committed against plaintiff by NYPD and DA's Office, that any reasonable Judge, when presented with the same, would have dismissed in the interests of Justice and thereby did cause various violations of his Civil and Constitutional Rights and ultimately undermines respect for the United States Constitution. She did cause and allow to continue plaintiff's unlawful imprisonment and malicious prosecution by not intervening when presented with the flagrant abuses of power by the Kings County DA's Office, should be sanctioned for dereliction of judicial responsibility.

Justice Parker, on July 18, 2005, denied having granted defendant Mapp/Dunaway hearings which is a matter of record. This fact denotes defendant's uphill battle to obtain a fair trial.

- V. **Plaintiff**, makes this Claim for Severe mental anguish due to his unlawful imprisonment and malicious prosecution and compensatory damages for unretrievable time lost with wife and children, whom also experienced separation anxiety due to the loss of affection, emotional, and financial support of Plaintiff, being their father and husband.

VI. **Relief:**

Generally, plaintiff seeks equitable compensatory and punitive damages for loss of liberty, and the pain and suffering of himself, his wife, and children whom are totally reliant on him. Since they reside in Jamaica, West Indies, it has been virtually impossible to communicate with them, causing further strain to his family.

Plaintiff, specifically seeks:

1. Punitive and compensatory damages of \$100,000 from each named person;
2. Punitive and compensatory damages of \$5,000,000 from the Legal Aid Society.
 - a) Policy requiring that they be required to turn over copies of any evidentiary material or information to their client within 24 hours of receipt thereof.
3. Combined damages against the City of New York in the amount of \$50,000,000.

a) A requirement that the DA's Office be required to provide all indigent defendants with copies of VDF within 24 hours of their receipt and prior to any offer of guilty plea.

I declare under penalty of perjury that on September 24, 2005, I delivered this complaint to prison authorities to be mailed to the United States District Court for the Eastern District of New York.

Signed this 24th day of September, 2005, I declare under penalty of perjury that the foregoing is true and correct.

Patrick R. Harrison

Patrick R. Harrison,
A/K/A Peter Thomas
Otis Bantum Corr. Center
#900-05- 00238
1600 Hazen Street
East Elmhurst, NY 11370

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TERM PART 30

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-agaainst-

PETER THOMAS,
Defendant.
-----X

NOTICE OF MOTION TO
DISMISS INDICTMENT
(or a count thereof)
IN THE INTEREST OF
JUSTICE

Ind. No. 1049-05 & 5129-05

Hon. Justice Sheryl L. Parker:

PLEASE TAKE NOTICE, that upon the annexed Affidavit In Support Of Motion To Dismiss Indictment (or a count thereof) In The Interest Of Justice, that I, Peter Thomas, acting pro se, make this application pursuant to Sections 210.20 and 210.40 of the Criminal Procedure Law and duly being sworn to this 20th day of September, 2005, and upon the supporting papers attached hereto, and made a part hereof, is made to this Supreme Court of the State Of New York, in the County of Kings, at 320 Jay Street, Brooklyn, New York, that a hearing be had, if necessary, with regards to aforementioned Affidavit and all relevant evidence referred to or otherwise required for the resolution of the same, at this Court's earliest convenience and for such other relief that this Court may deem just, proper and equitable.

Dated: September 20, 2005
E. Elmhurst, NY 11370

Respectfully submitted,

Peter Thomas
Peter Thomas

*Exhibits
ATTACHED*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TERM PART 30

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

-agaainst-

PETER THOMAS,
Defendant.
-----X

AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS INDICT-
MENT (or a count thereof)
IN THE INTEREST OF JUSTICE

Ind. No. 1049-05 & 5129-05

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

Peter Thomas, being duly sworn, deposes and says:

That I am the defendant, acting pro se in the above-named indictment, and am personally familiar with the facts hereinafter stated.

That I was indicted by the Grand Jury of the County of Kings on the 17th day of February, 2005, charged with the crimes of: Attempted criminal possession of stolen property in the 5th°; Trademark counterfeiting in the 2nd° and 3rd°; Failure to disclose the origin of a recording in the 2nd° and 1st° [added in the indictment of July 18, 2005 (5129-05)]; Cigarettes and tobacco products law [PL 1814(A)(1)] and [PL 1814 (D); Article 37]; and Attempted to evade or defeat a New York City Tax [AC 11-4012(A)(I)]. A copy of said indictment is annexed hereto marked "Exhibit A." Arraignment of the defendant upon the first indictment took place in this Court on the 5th day of April, 2005, but there has yet to be an arraignment on the new indictment (5129-05). To this date no plea of guilty has been entered by said defendant nor has trial been commenced as to the aforementioned charges.

This application is made upon the grounds that dismissal of the indictment [or a count thereof] is required in the furtherance of justice pursuant to Sections 210.20 and 210.40 of the Criminal Procedure Law, in that there exists compelling factors, consideration or circumstances clearly demonstrating that conviction or prosecution of the defendant upon either indictment [or count thereof] would constitute or result in injustice. The reasons why dismissal in the furtherance of justice should be granted are as follows:

1. Exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant, such that "his action was not a reasonable mistake, but an unacceptable error indicating gross incompetence or neglect of duty..." Malley v. Briggs, 106 S.Ct. 1092 (1986) and Ortiz v. Pearson, 88F. Supp.2d 151.

a) The police officer filed a warrant application which contained false and misleading testimony which no police officer of reasonable competence would have filed because it misled the issuing judge into believing that the defendant, who was already "arrested and who remained in custody," was not yet apprehended, as of 7:38 P.M., and was at the subject location and in "possession of informant's property (the X-Box)." Under the rule of qualified immunity, "a police officer with a complaint and a supporting affidavit, which failed to establish probable cause on the grounds that act of applying for an arrest [or search] warrant is per se **objectively reasonable where officer believes that facts alleged in affidavit are true,**" and if not the case, he should not have applied for the warrant, in this case, where application for warrant was not objectively reasonable because it "created unnecessary danger of an unlawful arrest." See Civil Rights Law: 13.8(4); 42 U.S.C.A § 1983. Compare Warrant Application/Warrant # 41/2005 (Exhibit #1), Arrest & Complaint Reports [NYPD] (Exhibit #2) and docket #2005KND08517 (Exh.#3).

b) Magistrate was not made aware that police had already entered 526 Ralph Avenue and remained therein, conducted a search of the 1st floor and basement apartment, arrested defendant and seized property (1:40pm) for which defendant is currently facing prosecution, hours prior to filing the above-named Warrant Application (7:38 P.M.) and the issuance of the 'alleged' accompanying Warrant (7:38 P.M.). Police, in arresting and then filing application for the warrant and then falsifying charges against defendant, acted egregiously, intentionally and recklessly to cause severe emotional distress. Carter v. District of Columbia, 795 F.2d 116 and "officer's accounts were fraught with inexplainable discrepancies, inconsistencies and material omissions," which, at the very least, require a dismissal in this case for the serious 4th Amendment and various other constitutional violations made herein by law enforcement personnel.

C) The filing officer, Robert L. Simms, shield No. 13057, was not the "original arresting officer" complained of in defendant's several motions and pleadings, beginning with defendant's Motion/Request For Witnesses to Testify Before the Grand Jury (April 5, 2005), or the Subpoena for the "red-haired" arresting officer, which was presented to the Court on August 8, 2005. Officer Simms, conveniently left out facts of the arrest, because he was not the officer who conducted the approach, request to speak with defendant, the handcuffing of defendant, the interrogation of defendant, the placing of defendant in the car, or holding cell at the 77th Precinct, i.e. **arrest of defendant**. He was, however, one of the officers complained of who assaulted defendant at the 77th Precinct, at or about 10 P.M. when defendant refused to sign a consent drafted by an officer, which would give NYPD permission to search the **already searched** premises. "Where officers

procuring warrant have deliberately mislead magistrate about relevant information, no magistrate will have made prior probable cause determination on basis of corrected affidavits" and reviewing Court "tries to predict whether magistrate would have found probable cause if he had been presented with truthful information, is a question of fact rather than law." Velardi v. Walsh, 40 F.3d 569.

D) Police who readily falsified significant facts, certainly would have no problem misleading judge about the "pseudo probable cause" that they created solely to entrap defendant with the story of a hard-luck seller of an X-Box, only to later change their story in that the police property was in fact a "stolen X-Box" recently stolen from "an apartment" (February Grand Jury Minutes). No reasonable person would believe that anyone would randomly approach a complete stranger and reveal to him that he possessed stolen property, which he was attempting to sell. Even the lowest and most desperate in our society would claim ownership of such property, as did the seller, Officer David Terrell, in this case. *Falsus in uno, falsus in omnibus*, i.e., if the officer's testimony on a material issue is intentionally deceitful, the jury may disregard all of his testimony.

CPL § 210.40(1) and (2), set out the criteria for dismissal of the indictment in the furtherance of justice as follows:

1. An indictment or any count thereof may be dismissed in the furtherance of justice, as provided in paragraph (i) of subdivision one of section 210.20, when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (h) of said subdivision one of section 210.20, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration, or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice. In determining whether such compelling factor, consideration, or circumstance exists, the court must, to the extent applicable, examine and consider, individually and collectively, the following:

(a-b) the seriousness and circumstances of the offense; defendant's purchase of the X-box, in good faith and for his daughters, which was not stolen or 'was unverifiably told that it was stolen' leaves only the defendant and his family suffering the risk of any harm.

(c) the evidence of guilt, whether admissible or inadmissible at trial; there is no evidence provided that defendant was involved in any criminal activity, rather simply that defendant resided in the basement apartment of 526 Ralph Avenue and possessed the right to privacy, therein.

(d) the history, character and condition of the defendant; indeed, the defendant has a criminal record, though not extensive and not having been arrested in 17 years, should be given the benefit of "extraordinary rehabilitation" in turning his life around and being crime-free today. Defendant, along with his wife and children, currently reside in Jamaica and his short 'visit' was only to legally purchase specific items to help make life there bearable.

(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of defendant; See page 2, paragraph 1(a-d) of this affidavit.

(f-j) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; after first having been given the opportunity by Nicole Mull for time served, on February 17, 2005, "consigning this defendant to prison would not only violate the essence of the Sentencing Guidelines, but would constitute a destructive act of cruelty on defendant [along with his wife and infant daughters] with an unjustifiable impact on society." See U.S. v. Hawkins, E.D.N.Y. (02-CR-563), citing U.S. v. Kane, 88 F.Supp. 2d 408, 409 (E.D.P.A. 2000) "a subsequent crime was not fatal to defendant's claims of "extraordinary rehabilitation."

2. In addition to the grounds specified in subdivision one of this section, a count alleging enterprise corruption in violation of article 460 of the Penal Law may be dismissed in the interest of justice where prosecution of that count is inconsistent with the stated legislative findings in said article. Upon a motion pursuant to this section, the court must inspect the evidence before the grand jury and such other evidence or information as it may deem proper.

In the event that this court, after review of the aforementioned grounds in support of dismissal in the interest of justice, makes an unfavorable decision for the same, the defendant, hereby request an **Adjournment in Contemplation of Dismissal (ACD)**, pursuant to § 170.55. Otherwise, defendant renews his request for **Release on Own Recognizance (ROR)**, as he cannot afford the current bail.

No previous application for the relief sought herein has been made.

Wherefore, your deponent prays for an order dismissing the indictment [or a count thereof], and for any other relief requested herein, or that this Court may deem just, proper and equitable.

Dated: September 21, 2005
E. Elmhurst, NY 11370

Respectfully,

Peter Thomas

Peter Thomas

S U P R E M E C O U R T O F T H E S T A T E O F N E W Y O R K
C O U N T Y O F K I N G S

THE PEOPLE OF THE STATE OF NEW YORK
AGAINST

J. PETER THOMAS
DEFENDANT
2005KN008517

INDICTMENT NO. 1049/2005
ORANGE ZONE

COUNTS

ATTEMPTED CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE
FIFTH DEGREE
TRADEMARK COUNTERFEITING IN THE SECOND DEGREE
TRADEMARK COUNTERFEITING IN THE THIRD DEGREE
FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING IN THE
SECOND DEGREE
CIGARETTE AND TOBACCO PRODUCTS LAW (NEW YORK STATE TAX)
CIGARETTE AND TOBACCO PRODUCTS LAW (NEW YORK STATE TAX)
ARTICLE 37
ATTEMPTED TO EVADE OR DEFEAT A NEW YORK CITY TAX

66 Exhibit A
4-Page

A TRUE BILL

CHARLES J. HYNES
DISTRICT ATTORNEY

FOREPERSON

FIRST COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF ATTEMPTED CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE [PL 110/165.40] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS WITH INTENT TO BENEFIT HIMSELF OR A PERSON OTHER THAN AN OWNER THEREOF OR TO IMPEDE THE RECOVERY BY AN OTHER THEREOF, KNOWINGLY ATTEMPTED TO POSSESS STOLEN PROPERTY, NAMELY: AN X BOX VIDEO GAME SYSTEM OWNED BY NEW YORK CITY POLICE DEPARTMENT.

SECOND COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF TRADEMARK COUNTERFEITING IN THE SECOND DEGREE [PL 165.72] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS KNOWINGLY AND UNLAWFULLY POSSESSED WITH THE INTENT TO DECEIVE OR DEFRAUD SOME OTHER PERSON OR WITH THE INTENT TO EVADE A LAWFUL RESTRICTION ON THE SALE, RESALE, OFFERING FOR SALE OR DISTRIBUTION OF GOODS; MANUFACTURES, DISTRIBUTES, SELLS OR OFFERS FOR SALE GOODS WHICH BEAR A COUNTERFEIT TRADEMARK OR POSSESSES A TRADEMARK KNOWING IT TO BE COUNTERFEIT FOR THE PURPOSE OF AFFIXING IT TO ANY GOODS, AND THE RETAIL VALUE OF ALL SUCH GOODS BEARING COUNTERFEIT TRADEMARKS EXCEEDS \$1,000.00

THIRD COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF TRADEMARK COUNTERFEITING IN THE THIRD DEGREE [PL 165/71] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS WITH THE INTENT TO DECEIVE OR DEFRAUD SOME OTHER PERSON OR WITH THE INTENT TO EVADE A LAWFUL RESTRICTION ON THE SALE, RESALE, OFFERING FOR SALE OR DISTRIBUTION OF GOODS; MANUFACTURES, DISTRIBUTES SELLS OR OFFERS FOR SALE GOODS WHICH BEAR A COUNTERFEIT TRADEMARK OR POSSESSES A TRADEMARK KNOWING IT TO BE COUNTERFEIT FOR THE PURPOSE OF AFFIXING IT TO ANY GOODS

FOURTH COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING IN THE SECOND DEGREE [PL 275.35] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS FOR COMMERCIAL ADVANTAGE OR FINANCIAL GAIN, KNOWINGLY ADVERTISED OR OFFERED FOR SALE, RESALE OR RENTAL, OR SOLD, RESOLD OR RENTED, OR POSSESSED FOR SUCH PURPOSES, A RECORDING THE OUTSIDE COVER, BOX, OR JACKET OF WHICH DOES NOT CLEARLY AND CONSPICUOUSLY DISCLOSE THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER AND THE NAME OF THE PERFORMER OR PRINCIPLE ARTIST.

FIFTH COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF CIGARETTE AND TOBACCO PRODUCTS LAW (NEW YORK STATE TAX) [PL 1814 (A) (1)] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS, WILLFULLY ATTEMPTED IN ANY MANNER TO EVADE OR DEFEAT ANY TAXES IMPOSED BY ARTICLE TWENTY OF THIS CHAPTER OR PAYMENT THEREOF.

SIXTH COUNT

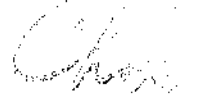
THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF CIGARETTE AND TABACCO PRODUCTS LAW (NEW YORK STATE TAX ARTICLE 37 [PL 1814 (D)] COMMITTED AS FOLLOWS:

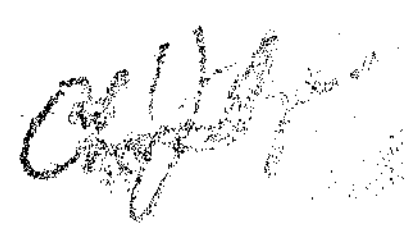
THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS, WITHOUT BEING AGENTS LICENSED BY THE COMMISSIONER, WILLFULLY POSSESSED OR TRANSPORTED FOR THE PURPOSE OF SALE ANY INSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES SUBJECT TO TAX IMPOSED BY SECTION FOUR HUNDRED SEVENTY-ONE OF THIS CHAPTER OR OFFERED FOR SALE UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES IN VIOLATION OF THE PROVISIONS OF THIS CHAPTER

SEVENTH COUNT

THE GRAND JURY OF THE COUNTY OF KINGS BY THIS INDICTMENT, ACCUSES THE DEFENDANT OF THE CRIME OF ATTEMPTED TO EVADE OR DEFEAT A NEW YORK CITY TAX [AC 11-4012 (A) (I)] COMMITTED AS FOLLOWS:

THE DEFENDANT, ON OR ABOUT FEBRUARY 9, 2005, IN THE COUNTY OF KINGS, WILLFULLY ATTEMPTED TO EVADE OR DEFEAT A NEW YORK CITY TAX IMPOSED UNDER ARTICLE 13 OF THE NEW YORK CITY ADMINISTRATIVE CODE OR PAYMENT THEREOF BY POSSESSING UNTAXED OR UNSTAMPED CIGARETTES


CHARLES J. HYNES
DISTRICT ATTORNEY



CITY

SUPREME COURT OF THE STATE OF NEW YORK
Part Misc., KINGS COUNTY

Exhibit # 1
3 pages

Police Officer Robert Simms, shield [REDACTED] of the New York City Police Department, being duly sworn, deposes and says:

1. I am a New York City Police Officer currently assigned to the 77th precinct Burglary Unit.

2. I have been a police officer for approximately one and a half years. I have also made approximately five prior arrests for trademark counterfeiting. I have also received specialized training from the Recording Label Industry and Motion Picture Industry in the identification of counterfeit compact discs, digital video discs (hereinafter "CDs"), and videotapes.

on Ralph
Anne,
between 924
and 926
Ralph
the, as
more
particularly
described
below;

4. Deponent states that deponent on February 9, 2005, at approximately 1:00 p.m., the deponent was present in the subject location and made the following observations: 52 Ralph Avenue is a three-story yellow brick face building located in the middle of the block between Park Place and Sterling Place. The number "52" is written above the front glass door with roll down gates. To the left of the subject location is "526 Ralph Avenue" and to the right of the subject location is "524 Ralph Avenue". Upon entering through the glass door one would be in the store itself. There are clear plexiglass shelves in this vestibule area. On the shelves are DVD's and CD's.

that its position
orly in between
ich ~~at~~ 524 and
CDs 526 Ralph
and Ave., as
es; described
and below, I
the infer that
D's are as more
digits and/or
letters have
at been
cer omitted
our after the
pon accounts
100 "52".

5. Deponent states that on February 9, 2005, at approximately 12:50 p.m., the deponent observed Police Officer David Terrell enter the subject location with an X-box and four games. The deponent is informed by the INFORMANT that upon entering the subject location the INFORMANT observed over 100 DVD's and CDs displayed inside the subject location. The deponent is further informed by the INFORMANT that the INFORMANT stated to the Target that the informant had a stolen X-box with four games for sale and that Target purchased said X-box and games for \$31.00 United States currency. Deponent states that deponent observed the informant leave the subject location without said X-box and games.

games. Shortly following these events, the target was arrested in the subject location and remains in custody. Other persons have been provided no suspect involving involvement in subject

Prepared by: ADA MINERVA JOHN-STULL
Search Warrant Application # 41/2005

will continue to do so until the warrant
hereafter is executed.

Def. Bought
the X Box.
Not attempted
ARRESTED - REMAIN
CUSTODY

2-PLS
The deponent further states that the deponent observed that said DVD's and CD's in the subject location contained poorly reproduced photographs, and blurred printed wording which was faded in color quality whereas legitimate DVD's and CDs usually contain sharp vividly colored graphics, pictures and wording of the Title, company names, distributors and addresses; said DVD's and CD's were loosely wrapped in plastic and legitimate CDs are vacuum sealed in plastic. It is the professional opinion of the deponent that said DVD's and CD's from the subject location are counterfeit.

7. The property sought to be seized, namely counterfeit DVD's and CDs, are property constituting evidence of a crime and property which tends to demonstrate that the following offense was committed:

P.L. Section 165.72 Trademark counterfeiting in the second Degree;

8. Based on the above, I believe that individuals are using the above location to store and sell counterfeit DVD's and CDs and said counterfeit DVD's and CDs can be found inside the following location: 50 Ralph Avenue, Brooklyn, Kings County, New York.

(the storefront more particularly described above on)

I request that any examination by this Court be incorporated into this application.

I further request that this application and any examination by this Court be sealed except for one copy which will be maintained by the Investigations Bureau of the Kings County District Attorney's Office and one copy to be maintained in the confidential police folder.

WHEREFORE, I respectfully request that the court issue a warrant and order of seizure in the form annexed, authorizing a search of the above described premises, and of the person and/or persons, or of anyone found thereat, and directing that if sinformanth property or evidence or any part thereof be found that it be seized and brought before the court; together with sinformanth other and further relief that the court may deem proper.

No previous application in this matter has been made in this or in any other court to any other judge or justice.

PO
OFFICER

SHIELD

Sworn to before me this
9th day of February 2005
TIME: 7:38 P/T

AR3 FEB 09 2005

JUDGE GIBBONS

REP. POLO

2-PLS
JUDGE OF THE SUPREME COURT
Kings County, State of New York

COURT REPORTER

Prepared By: ADA Minerva John-Stull
Search Warrant Application # 41/2005

CRIMINAL
SEARCH WARRANT
SUPREME COURT OF THE STATE OF NEW YORK
MISCELLANEOUS PART, COUNTY OF KINGS

In the name of the People of the State of New York.

To any Police Officer of the City of New York:

Proof by affidavit having been made this day before me by Police Officer Robert Simms, shield 13057, of the 77th precinct Burglary Unit,

that there is probable cause for believing that certain property, namely: Counterfeit DVD's and CDs and will be found in 52nd Ralph Avenue, Brooklyn, New York, *(counterfeit)*

You are therefor commanded, (between the hours of 6:00 A.M. AND 9:00 P.M.) to make a search of:

52 Ralph Avenue, a first floor storefront, *more particularly described below on Ralph Ave., Brooklyn, N.Y.*

52nd Ralph Avenue is a three-story yellow brick face building located in the middle of the block between Park Place and Sterling Place. The number "52" is written above the front glass door with roll down gates. To the left of the ~~subject location~~ is "526 Ralph Avenue" and to the right of the ~~subject location~~ is "524 Ralph Avenue". *the storefront is searched*

~~and of any other person found in the above premises or seen exiting, entering, or attempting to enter or exit the above premises during the warrant execution, including, but not limited to a black male, approximately 5'7" in height, approximately 220 pounds, in his mid 30's, or who may be found to have sinformanth property in his/her possession, or under his/her control, or to whom sinformanth property may have been delivered, and if you find any sinformanth property or any part thereof to bring it, and this warrant, without unnecessary delay, before any judge or justice in Part Misc. 360 Adams Street, Brooklyn, New York.~~ *120 x hammerhead* *of the Criminal Court*

Dated: February 9, 2005
Brooklyn, N.Y. 7:35 PM

Issued on a Affidavit of *[Signature]*

AND FEB 09, 2005



JUDGE GIBBONS

REP. POLA

Search Warrant #41/2005
Prepared by ADA Minerva John-Stull

And you are directed to seize any of the above described property which may be found during the search and you are directed to deliver any property seized pursuant to this warrant, with an inventory thereof, and return
Justice, Supreme Court Judge of the Criminal Court
Kings County, State of New York

RR EST Report - K05610282

	New York City Police Department Omniform System - Arrests	
--	--	--

RECORD STATUS: NYSID ENTERD		Arrest ID: K05610282 - J
Arrest Location: INSIDE OF 526 RALPH AVENUE		Pct: 077
Arrest Date: 02-09-2005	Processing Type: ON LINE	
Time: 13:40:00	DCJS Fax Number: K0009131	
Sector: M	Special Event Code: -	
	DAT: NO	
Stop And Frisk: NO	Return Date:	
Serial #: 0000-000-00000		Arrest #: K05610282

COMPLAINTS:			
COMPLAINT NUMBER	REPORT DATE	RECORD STATUS	OCCUR DATE OCCUR TIME
2005-077-01059	2005-02-09	Valid, Initial Arrests made	2005-02-09 12:50

CHARGES:		Arrest #: K05610282
CHARGE	ATTEMPT?	LAW CODE CLASS TYPE COUNTS DESCRIPTION
TOP	No	PL 275.40 F E 1 FAIL DISCLOSE ORIGIN REC-1ST
#02	No	PL 275.40 F E 1 FAIL DISCLOSE ORIGIN REC-1ST
#03	No	PL 185.72 F E 1 TRADEMARK COUNTERFEITING 2ND
#04	No	PL 165.72 F E 1 TRADEMARK COUNTERFEITING 2ND
#05	Yes	PL 165.40 M A 1 CRIM POSSESSION STOLN PROP-5TH
#06	No	TAX1814 A1 M A 1 EVADE PAYMENT OF CIGARETTE TAX

DWI Arrest front:	# Injured:	# Fatalities:	Test Given:	B.A.C.:	Reason Not Forfeit:
	00	00			
Arrest #: K05610282					

DETAILS:
AT TIPIO WHILE CONDUCTING A STING OPERATION (BURGLARY), DEFT WAS ADVISED NUMER OUS TIMES THAT THE X-BOX AND VIDEO GAMES WERE STOLEN. DEFT THEN PROCEDED TO PU RCHASE MERCHANDISE FOR \$31 USC. DURING THE OPERATION UC OBSERVED INSIDE OF LOC ATION NUMEROUS DVD'S AND CD'S (COUNTERFEIT) DISPLAYED ON SHELVES. PURSUANT TO A SEARCH WARRANT ISSUED BY THE DA'S OFFICE OF KINGS COUNTY NUMEROUS DVD'S AND CD'S WERE RECOVERED. DVD'S PARAPHERNALIAS AND 2 COMPUTER TOWERS USED TO BURN D VD'S AND CD'S ALSO UNTAXED CIGAARETTES WERE RECOVERED FROM LOCATION.

DEFENDANT: THOMAS, PETER		NYSID #: 4991467Z	Arrest #: K05610282
Nick/AKA/Maiden:	Height: 5FT-7IN	Order Of Protection:	
Sex: MALE	Weight: 220	Issuing Court:	
Race: BLACK	Eye Color: BROWN	Docket #:	
Age: 37	Hair Color: BLACK	Expiration Date:	
Date Of Birth: 12/25/1967	Hair Length: SHORT	Relation to Victim: STRANGER	
U.S. Citizen: NO	Hair Style: CLOSE CUT	Living together: NO	
Place Of Birth: JAMAICA	Skin Tone: MEDIUM	Can be Identified: NO	
Need Interpreter: NO	Complexion: CLEAR		
Language:	Soc Security #:	Gang Affiliation: NO	
Accent: NO	Occupation: NONE	Name:	
Physical Condition: APPARENTLY NORMAL	Lic/Permit Type:	Identifiers:	
Drug Used: NONE	Lic/Permit No:		

http://omniform1:8888/cgi-bin/ibi/cgi/ibiweb.exe?IBIF_ex=VIEWARST&ARRID=K05610282&FILLE... 4/25/2005

Note: Inside Subject location denotes illegal entry at 12:50 PM and 13:40 PM

Police Officer entered Private Premises in which nothing was reported visible by patrol and without a search warrant.

POLICE DEPARTMENT		New York City Police Department		MISD	
OmniForm System - Complaints					
Report Cmd: 077	Jurisdiction: N.Y. POLICE DEPT	Record Status: Ready for Signoff, with Arrest	Complaint # 2005-077-01059		
Occurrence Location: INSIDE OF 526 RALPH AVENUE Name Of Premise: Premises Type: STORE UNCLASSIFIED Location Within Premise: Visible By Patrol?: NO			Precinct: 077 Sector: M Beat: 2 Post: PP		
Occurrence From: 2005-02-09 12:50 WEDNESDAY Occurrence Thru: 2005-02-09 13:40 Reported: 2005-02-09 22:00 Complaint Received: WALK-IN			Aided # Accident # O.C.C.B. #		
Classification: TRADEMARK COUNTERFEIT Attempted/Completed: COMPLETED Most Serious Offense Is: FELONY PD Code: 729 FORGERY, ETC., UNCLASSIFIED-FEL PL Section: 16572 Keycode: 113 FORGERY			Case Status: CLOSED Unit Referred To: Clearance Code: UNIFORM ARREST Log/Case #: 0 File #: 12 Prints Requested? NO		
Was The Victim's Personal Information Taken Or Possessed? NO			Was The Victim's Personal Information Used To Commit A Crime? NO		
Gang Related? NO	Gang Intel Log #:	Name Of Gang:	DIR Required? NO	Child Abuse Suspected? NO	
If Burglary: Forced Entry? Structure: Entry Method: Entry Location:		Alarm: Bypassed? Comp Responded? Company Name/Phone: Crime Prevention Survey Requested?:		If Arson: Structure: Occupied?: Damage by:	
Supervisor On Scene - Rank / Name / Command: SGT FRANQUI 077			Canvas Conducted: NO	Interpreter (If used):	
NARRATIVE: AT T/PIQ WHILE CONDUCTING A STING OPERATION (BURGLARY), DEFT WAS ADVISED NUMEROUS TIMES THAT THE X-BOX AND VIDEO GAMES WERE STOLEN. DEFT STILL PROCEEDED TO PURCHASE MERCHANDISE FOR \$31 USC. DURING OPERATION UC OBSERVED INSIDE OF LOCATION NUMEROUS DVD'S AND CD'S (COUNTERFEIT) DISPLAYED ON SHELVES. PURSUANT TO A SEARCH WARRANT ISSUED BY DA'S OFFICE OF KINGS COUNTY NUMEROUS DVD'S AND CD'S WERE RECOVERED. DVD'S PARAPHERNALIAS AND 2 COMPUTER TOWERS USED TO BURN DVD'S AND CD'S ALSO UNTAXED CIGARETTES WERE RECOVERED FROM LOCATION.					
Total Victims: 1	Total Witnesses: 0	Total Reporters: 0	Total Wanted: 0		
VICTIM: # 1 of 1		Name: MALONEY, GENE		Complaint #: 2005-077-01059	
Nick/AKA/Maiden: Sex/Type: MALE Race: UNKNOWN Age: 0 Date Of Birth: Disabled? NO Need Interpreter: NO Language: N.Y.C.H.A. Resident? NO		Gang Affiliation: Name: Identifiers: Will View Photo: Will Prosecute: Notified Of Crime Victim Comp. Law:			
LOCATION ADDRESS CITY STATE/COUNTRY ZIP APT/ROOM BUSINESS 200 WHITE PLAINS ROAD TARRY NEW YORK 10591					
Phone #:					
Action against Victim:		Actions Of Victim Prior To Incident:			
Victim Of Similar Incident:		If Yes, When And Where			
ARRESTS:		Complaint # 2005-077-01059			
Arrest ID Status Defendant Name Sex Race AGE Arrest Date K05610282 ACTIVE THOMAS, PETER MALE BLACK 37 02/09/2005					

ON LINE BOOKING SYSTEM ARREST WORKSHEET																	
Arrest No.		Arrest Pct.		Sector		DAY <input type="checkbox"/> Yes <input type="checkbox"/> No		Return Date		Officer Excused <input type="checkbox"/> Yes <input type="checkbox"/> No		Special Event Code					
COMPLETE THIS SECTION ONLY FOR AN ARREST WHEN A COMPLAINT REPORT WAS PREVIOUSLY PREPARED																	
Original Complaint		Date		Offense		Complainant's Name (Last Name, First, M.I.)											
Pct.		Compl. #															
REQUIRED ONLY FOR AN OCCB ARREST AND AN ARREST NOT REQUIRING A COMPLAINT REPORT																	
Time		Date		Address/Location Of Offense: <input type="checkbox"/> Inside <input type="checkbox"/> In Front Of <input type="checkbox"/> Rear Of <input type="checkbox"/> Opposite Of						ApurRoom #							
Cross Streets		&		OR		Intersection Of		&		Corner <input type="checkbox"/> N/E <input type="checkbox"/> N/W <input type="checkbox"/> S/E <input type="checkbox"/> S/W							
Jurisdiction (check one) <input type="checkbox"/> NYPD <input type="checkbox"/> NYPD Transit Bureau <input type="checkbox"/> NYPD Housing Bureau <input type="checkbox"/> Other																	
Premises Type: <input type="checkbox"/> Residential <input type="checkbox"/> House of Worship <input type="checkbox"/> School: <input type="checkbox"/> Public <input type="checkbox"/> Other																	
<input type="checkbox"/> Public Transportation <input type="checkbox"/> Commercial <input type="checkbox"/> Other																	
On NYC Bd. of Ed. <input type="checkbox"/> Yes <input type="checkbox"/> No Type of School: <input type="checkbox"/> Elem. <input type="checkbox"/> IS <input type="checkbox"/> JHS <input type="checkbox"/> HS <input type="checkbox"/> Sp. Ed. School No. School Name																	
School Property <input type="checkbox"/> No																	
NYC Transit Station Line # Location In Transit System NYCHA Development Name																	
THE FOLLOWING INFORMATION MUST BE COMPLETED FOR ALL ARRESTS																	
Department		Command		Tax Registry No.		Identification No. (If Not NYPD)		Shield No.									
Rank		Last Name		First		M.I.											
On Duty <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		In Uniform <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Squad		Chart		Primary Assignment: <input type="checkbox"/> Beat Officer <input type="checkbox"/> Other Uniform <input type="checkbox"/> Anti-Crime <input type="checkbox"/> Investigatory <input type="checkbox"/> Other									
Force Used <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Type: <input type="checkbox"/> Handgun <input type="checkbox"/> Chemical Agent <input type="checkbox"/> Rifle/Shotgun <input type="checkbox"/> Other		Reason For Force: <input type="checkbox"/> Overcome Assault <input type="checkbox"/> Prevent Escape <input type="checkbox"/> Restrain <input type="checkbox"/> Other		Arresting Officer Injured <input type="checkbox"/> Yes <input type="checkbox"/> No											
Assigned <input type="checkbox"/> Yes <input type="checkbox"/> No		Department		Command		Tax Registry No.		Ident. No. (If Not NYPD)		Last Name, First, M.I.							
Time		Date		Address/Location Of Arrest: <input checked="" type="checkbox"/> Inside <input type="checkbox"/> In Front Of <input type="checkbox"/> Rear Of <input type="checkbox"/> Opposite Of						ApurRoom #							
Cross Streets		&		OR		Intersection Of		&		Corner <input type="checkbox"/> N/E <input type="checkbox"/> N/W <input type="checkbox"/> S/E <input type="checkbox"/> S/W							
Arrest Numbers Of Associates																	
Is This Arrest Related <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Serial #																	
To Stop And Frisk Report <input type="checkbox"/> No																	
Invoice #		Command		Type:		<input type="checkbox"/> Drugs <input type="checkbox"/> Veh. <input type="checkbox"/> Curr. <input type="checkbox"/> Gun <input type="checkbox"/> Jewelry <input type="checkbox"/> Boat <input type="checkbox"/> Other											
Invoice #		Command		Type:		<input type="checkbox"/> Drugs <input type="checkbox"/> Veh. <input type="checkbox"/> Curr. <input type="checkbox"/> Gun <input type="checkbox"/> Jewelry <input type="checkbox"/> Boat <input type="checkbox"/> Other											
Last Name		First		M.I.		Date Of Birth		Age									
Occupation		License/Permit Type (Excluding Drivers Lic.) <input type="checkbox"/> Handgun <input type="checkbox"/> Tow Truck Driver <input type="checkbox"/> Taxi Medallion <input type="checkbox"/> Water Front Lic. <input type="checkbox"/> Rifle <input type="checkbox"/> Tow Truck Owner <input type="checkbox"/> Taxi Livery <input type="checkbox"/> Other						License/Permit #									
Telephone Calls:																	
1. () Name 2. () Name 3. () Name																	
Physical Condition:																	
<input type="checkbox"/> Apparently Normal <input type="checkbox"/> Injury-To Hospital <input type="checkbox"/> Intox.-Drugs <input type="checkbox"/> Sick-To Hospital <input type="checkbox"/> Unknown <input type="checkbox"/> Deceased <input type="checkbox"/> Injury-RMA <input type="checkbox"/> Intox.-Unknown <input type="checkbox"/> Sick-RMA <input type="checkbox"/> EDP-To Hospital <input type="checkbox"/> Injury-Treated & Released <input type="checkbox"/> Pregnant-Normal <input type="checkbox"/> Sick-Treated & Released <input type="checkbox"/> EDP-Released From Hospital <input type="checkbox"/> Intox.-Alcohol <input type="checkbox"/> Pregnant-Requires Medical Aid <input type="checkbox"/> Unconscious																	
Type of Drug Used:																	
<input type="checkbox"/> Opium & Derivative <input type="checkbox"/> Other Cocaine <input type="checkbox"/> Synthetic Opiates <input type="checkbox"/> Hallucinogens <input type="checkbox"/> Glue-Toxic Vapors <input type="checkbox"/> Unknown <input type="checkbox"/> Crack <input type="checkbox"/> Marijuana/Hashish <input type="checkbox"/> Depressant/Stimulant <input type="checkbox"/> Hypo-Syringe-Needle <input type="checkbox"/> Other <input type="checkbox"/> None																	
Juv. Offender		Number of Priors		School Attending		Mother's Maiden Name											
<input type="checkbox"/> Yes <input type="checkbox"/> No																	
Relative <input type="checkbox"/> Parent <input type="checkbox"/> Guardian		Name (Print)		Tele. #		Time Notified		Personal <input type="checkbox"/> Yes Recog: <input type="checkbox"/> No									
Notified: <input type="checkbox"/> Other Relative																	
CHARGES																	
		ATTEMPT?		LAW		SECTION		SUB.		CLASS		TYPE		COUNTS		DESCRIPTION	
Top Chg.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PL		105.40		E		F		1		1		Trademark (Chalk)	
2nd Chg.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PL		105.40		E		F		1		1		Failure to discharge	
3rd Chg.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PL		165.78		A		M		1		1		Trademark (Chalk)	
4th Chg.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PL		105.40		E		F		1		1		Failure to discharge	
5th Chg.		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PL		165.40		A		M		1		1		CPSPS	
If Drug Possession/Sale Is Top Charge: <input type="checkbox"/> Crack <input type="checkbox"/> Other Cocaine <input type="checkbox"/> Opium Deriv. <input type="checkbox"/> Synthetic <input type="checkbox"/> Other Drug																	
NARRATIVE																	
At 11:00 PM while conducting a drug operation (buying) Def was advised numerous times that the X-box and video games were stolen. Def still proceeded to purchase above merchandise for \$31.50. During operation of Def's release, Def's																	
Rank/Title		Arresting Off. / Assigned Off. Name (Print)		Signature		Tax Registry No.		Command		Agency							
PO		SIMPAS		[Signature]		[Redacted]		077		NYPD							
Rank/Title		Supervisor Approving Name (Print)		Signature		Tax Registry No.		Command		Agency							
Sgt		[Redacted]		[Signature]		[Redacted]		077		NYPD							

Not Arresting Officer →

Cmnd/Pct. Taking Report 577		Jurisdiction Of Complaint: <input checked="" type="checkbox"/> NYPD (Unless One Of The Following):	
<input type="checkbox"/> NYPD Transit Bureau <input type="checkbox"/> NYPD Housing Bureau <input type="checkbox"/> Port Authority Police <input type="checkbox"/> Triborough Bridge And Tunnel Police <input type="checkbox"/> N.Y. State Park Police		<input type="checkbox"/> Amtrak Police <input type="checkbox"/> Conrail Police <input type="checkbox"/> Staten Island Rapid Transit Police <input type="checkbox"/> N.Y. State Police <input type="checkbox"/> Long Island Railroad M.T.A. <input type="checkbox"/> U.S. Park Police <input type="checkbox"/> Health & Hospitals Corp. Police <input type="checkbox"/> Metro North M.T.A. <input type="checkbox"/> Other	
Location Of Occurrence <input checked="" type="checkbox"/> Inside <input type="checkbox"/> In Front Of <input type="checkbox"/> Rear Of <input type="checkbox"/> Opposite Of		Address 526 Ralph Ave	
Cross Streets Park & Sterling		County L	
Zip Code		Apt./Room#	
Military Time And Date Of This Report: 2200 02/04/05		Occurrence Time 1250 02/04/05 wed	
Pct. Of Occ. 577		Complaint #	
Date 02/04/05		Aided #	
Occurrence On Or From 1250 02/04/05 wed		Accident #	
Case Status <input type="checkbox"/> Open <input checked="" type="checkbox"/> Closed		Unit Referred To	
Log/Case #		File #	
Report Classification (If Offense, List Most Serious First): Indecent Exposure			
<input type="checkbox"/> Attempted <input checked="" type="checkbox"/> Completed			
Was The Victim's Personal Information Taken Or Possessed?		Was The Victim's Personal Information Used To Commit A Crime?	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Comp. Recd. <input checked="" type="checkbox"/> Walk-In <input type="checkbox"/> Written		Radio <input type="checkbox"/> Phone <input type="checkbox"/> Pick-Up	
Visible By Patrol <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Pct. Sector Of Occ.	
Beat Of Occ.		Post Of Occ.	
Prints Requested <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Possibly Gang Related <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If Yes, Gang Intel Log #	
Name Of Gang		If Arson: <input type="checkbox"/> Building <input type="checkbox"/> Motor Vehicle	
<input type="checkbox"/> Occupied <input type="checkbox"/> Unoccupied		Damage Caused By: <input type="checkbox"/> Explosion <input type="checkbox"/> Fire <input type="checkbox"/> Unk	
Domestic Incident Report Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Child Abuse Suspected <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Premises Type (Must Choose One)			
Residential: <input type="checkbox"/> Residence - Private House <input type="checkbox"/> Residence - Apt. Building <input type="checkbox"/> Residence - Public Housing		House Of Worship: <input type="checkbox"/> Church <input type="checkbox"/> Synagogue <input type="checkbox"/> Mosque <input type="checkbox"/> Other	
School: <input type="checkbox"/> Public (NYC Bd. Of Ed) <input type="checkbox"/> Private/Parochial <input type="checkbox"/> College/University <input type="checkbox"/> Other		Public Transportation: <input type="checkbox"/> Airport Terminal <input type="checkbox"/> Bus Terminal <input type="checkbox"/> Bus (NYC Transit) <input type="checkbox"/> Bus (Other) <input type="checkbox"/> Bus Stop	
<input type="checkbox"/> Ferry/Ferry Terminal <input type="checkbox"/> Taxi (Yellow Licensed) <input type="checkbox"/> Taxi (Livery Licensed) <input type="checkbox"/> Transit Facility (Other)			
Commercial: <input type="checkbox"/> ATM <input type="checkbox"/> Bank <input type="checkbox"/> Bar/Night Club <input type="checkbox"/> Beauty & Nail Salon <input type="checkbox"/> Book/Card Store		<input type="checkbox"/> Candy Store <input type="checkbox"/> Chain Store <input type="checkbox"/> Check Cashing Business <input type="checkbox"/> Clothing/Boutique <input type="checkbox"/> Commercial Building <input type="checkbox"/> Department Store	
<input type="checkbox"/> Doctor/Dentist <input type="checkbox"/> Drug Store <input type="checkbox"/> Dry Cleaner/Laundry <input type="checkbox"/> Factory/Warehouse <input type="checkbox"/> Fast Food <input type="checkbox"/> Gas Station		<input type="checkbox"/> Grocery/Bodega <input type="checkbox"/> Gym/Fitness Facility <input type="checkbox"/> Hospital <input type="checkbox"/> Hotel/Motel <input type="checkbox"/> Jewelry Store <input type="checkbox"/> Liquor Store	
<input type="checkbox"/> Loan Company <input type="checkbox"/> Photo/Copy Store <input type="checkbox"/> Restaurant/Diner <input type="checkbox"/> Shoe Store <input type="checkbox"/> Small Merchant <input type="checkbox"/> Social Club/Policy Location		<input type="checkbox"/> Storage Facility <input type="checkbox"/> Store Unclassified <input type="checkbox"/> Supermarket <input type="checkbox"/> Telecomm. Store <input type="checkbox"/> Variety Store <input type="checkbox"/> Video Store	
Indicate Name Of Business			
Other: <input type="checkbox"/> Abandoned Building <input type="checkbox"/> Bridge		<input type="checkbox"/> Cemetery <input type="checkbox"/> Construction Site <input type="checkbox"/> Highway/Parkway	
<input type="checkbox"/> Marina/Pier <input type="checkbox"/> Open Lot/Area <input type="checkbox"/> Park/Playground		<input type="checkbox"/> Parking Lot/Garage <input type="checkbox"/> Private <input type="checkbox"/> Public	
<input type="checkbox"/> Public Building <input type="checkbox"/> Street <input type="checkbox"/> Tunnel			
Indicate Name If Known:			
Exact Location Within Premises Type, If Known (Choose One).			
<input type="checkbox"/> Apartment <input type="checkbox"/> Basement <input type="checkbox"/> Commercial Establishment <input type="checkbox"/> Community Center <input type="checkbox"/> Driveway <input type="checkbox"/> Elevator		<input type="checkbox"/> Elevator Equipment Room <input type="checkbox"/> Freight Elevator <input type="checkbox"/> Garage <input type="checkbox"/> Hallway <input type="checkbox"/> Laundry Room <input type="checkbox"/> Lobby/Door/Vestibule	
<input type="checkbox"/> Maintenance/Storage Area <input type="checkbox"/> Management Offices/ Other Offices <input type="checkbox"/> Parking Lot <input type="checkbox"/> Play/Park Area <input type="checkbox"/> Public Sidewalk		<input type="checkbox"/> Rest Room <input type="checkbox"/> Roof <input type="checkbox"/> Roof Top Landing <input type="checkbox"/> Stairway <input type="checkbox"/> Terrace <input type="checkbox"/> Walkways	
<input type="checkbox"/> Motor Vehicle: <input type="checkbox"/> Car <input type="checkbox"/> Motorcycle <input type="checkbox"/> Truck		<input type="checkbox"/> Other	
If Burglary: Forcible Entry? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Att. Forcible Entry <input type="checkbox"/> Unknown (If Yes, Explain In Details)		If Burglary: Describe: <input type="checkbox"/> Vehicle <input type="checkbox"/> Bldg. Residential <input type="checkbox"/> Garage	
<input type="checkbox"/> Truck <input type="checkbox"/> Trailer <input type="checkbox"/> Watercraft		Location of Entry: <input type="checkbox"/> Front <input type="checkbox"/> Side <input type="checkbox"/> Roof <input type="checkbox"/> Other	
Point of Entry: <input type="checkbox"/> Window <input type="checkbox"/> Security Gate <input type="checkbox"/> Skylight <input type="checkbox"/> Vent/Duct <input type="checkbox"/> Other		Alarm Bypassed <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Alarm Company Responded <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Alarm Company Name And Telephone #		Crime Prev. Survey Requested <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Supervisor On Scene <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Was Interpreter Used: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Indicate Name, Address And Phone #	
Rank Sgt Name (Print) Scungis Cmnd 577		Name	
Canvass Conducted <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Indicate Interviews And Results)		Address	
Phone #			
DETAILS Reconstruct Incident And Report Of Preliminary Investigation <p>At 11:00 while conducting a drug operation (burglary) I was advised numerous times that the X-Box and video games were stolen, I still proceeded to purchase some merchandise for \$350.00. During operation I observed inside of location numerous Dab's & C's (Cointel) displayed on top of shelves. Pursuant to a search warrant issued by DA's office Kings County numerous Dab's & C's were recovered. Dab's paraphernalia & a computer tags used to burn Dab's & C's also untaxed cigarettes were recovered from location.</p>			

INTERVIEW REPORT

CJA LOG Page
16Line #
09Precinct
17

Arrest #

610282

Name: **THOMAS, PETER**

Age: 37 Interview Date: 10-Feb-05
DoB: 25-Dec-67 Interview Time: 05:44
Sex: MALE CJA Interviewer: EM K378
Hispanic? N Interview Location: CB
Race: BLACK Interview Language: ENGLISH

Name (on this arrest) from NYSID/Arrest
Report

NYSID: 4991467Z K389
Arrest Date: 09-Feb-05 Arrest Time: 13:40
Arrest Charges:
1 275.40 2 165.72
3 110-165.40 4

RESIDENCE/FAMILY

Current Address: 526 RALPH AVE, # BSMT

c/o
City, State Zip BROOKLYN, NY 11233
Lives with: Lives Alone

Contact: SELF

Relationship:

Phone #: 347-350-9584

Length at Current Address Years Months Weeks
9

Prior Address: 527 HINSDALE ST

City, State Zip BROOKLYN, NY

Contact: SELF

Relationship:

Phone #: NP

Length at Prior Address Years Months
3

Contact still Resides at Prior Address? N

ALTERNATE ADDRESS: NO ALTERNATE ADDRESS, #

City, State Zip

Contact:

Relationship:

Phone #:

Expects Someone at Arraignment? No

Name:

Relationship:

EMPLOYMENT

Employed? FULL TIME

Job/Position HANDYMAN

Employer AL HARRISON

Address

City, State BROOKLYN, NY

Length of Employment Yrs: Mos: 9

Hrs Worked/Wk Varies

Avg. Net Pay DK

Pay Period WEEKLY

Length of Unemployment Years Months

Other Employment Status

Does Defendant Provide Support for Others? N

If "Yes" How Many?

Other Sources of Financial Support:
NONE

Highest Grade 06

In School? NO

Name

In Training Program? NO

Name

In Treatment Program? NO

CRIMINAL RECORD

First Arrest (Excluding Violations)?	Warrant Attached to NYSID?	Prior Warrant?	# of Prior Convictions	Open Cases
N	BENCH	Y	Felonies: 00 Misdemeanors: 001	02

Gray Shading = Information from Official Sources

Miscellaneous Comments

LEGEND:

NP = No Phone

DK = Doesn't Know

NA = Not Applicable

RA = Refuses to Answer

NC = Not Calculated

No Shading = Information from Defendant

BK018449 C88208476

This report assesses the defendant's risk of flight by considering the following: community ties and warrant history as defined in sections 2(a)(ii) and 2(a)(iii)(vi) of CPL 510.30 and open cases. However, a positive assessment is withheld for defendants with outstanding bench warrants attached to their NYSID sheet at the arrest. This report does not consider other criteria listed in CPL 510.30 such as the defendant's mental condition, the weight of the evidence, or the possible sentence.

DEFENDANT'S RESPONSE VERIFICATION

CJA RECOMMENDATION

1	Has the defendant lived at his/her current address for 1.5 years or more?	NO	<input checked="" type="checkbox"/>	NOT RECOMMENDED FOR ROR
2	Does the defendant live with parent, spouse, C/L spouse of 6 months, grandparent, or legal guardian?	NO	<input checked="" type="checkbox"/>	
3	Does the defendant have a working telephone in residence/cell phone?	YES	1	BENCH WARRANT ATTACHED TO NYSID
4	Does the defendant report a NYC area address?	YES	0	
5	Is the defendant employed, or in school or training program, full time?	YES	1	
6	Does the defendant expect someone at arraignment?	NO	-1	
7	Does Prior Warrant equal Zero?	NO	-5	
8	Does Open Case equal Zero?	NO	-1	C1
	TOTAL POINTS		-5	

Verification Reference Source: NO CONTACTS PROVIDED

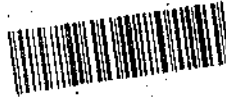
DEFENSE ATTORNEY

CRIMINAL COURT OF THE CITY OF NEW YORK
PART APAR COUNTY OF KINGS

STATE OF NEW YORK
COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

2005KN008517



PETER THOMAS

POLICE OFFICER ROBERT L SIMMS SHIELD NO. 13057, OF 077 COMMAND SAYS THAT ON OR ABOUT (1) FEBRUARY 09, 2005 AT APPROXIMATELY 12:50 PM AT 526 RALPH AVENUE BROOKLYN COUNTY OF KINGS, STATE OF NEW YORK.

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

PL 110/165.40

ATTEMPTED CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FIFTH DEGREE.

AND THAT, ON OR ABOUT, (2) FEBRUARY 09, 2005 AT APPROXIMATELY 09:50 PM AT 526 RALPH AVE. COUNTY OF KINGS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

AC 11-4012(2)(B)

AC 11-4012(A)(1)

PL 165.71

PL 165.72

PL 275.35

ATTEMPT

ATTEMPT TO EVADE/DEFEAT CIGARETTE TAX

TRADEMARK COUNTERFEITING IN THE THIRD DEGREE

TRADEMARK COUNTERFEITING IN THE SECOND DEGREE

FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING IN

THE SECOND DEGREE

ATTEMPT TO EVADE/DEFEAT CIGARETTE TAX

POSSESSION FOR SALE OF UNTAXED CIGARETTES.

IN THAT THE DEFENDANT DID:

KNOWINGLY ATTEMPT TO POSSESS STOLEN PROPERTY WITH THE INTENT TO BENEFIT HIMSELF OR A PERSON OTHER THAN AN OWNER THEREOF OR TO IMPEDE THE RECOVERY BY AN OWNER THEREOF, WITH THE INTENT TO DECEIVE OR DEFRAUD SOME OTHER PERSON OR WITH THE INTENT TO EVADE A LAWFUL RESTRICTION ON THE SALE, RESALE, OFFERING FOR SALE, OR DISTRIBUTION OF GOODS, MANUFACTURE, DISTRIBUTE, SELL, OR OFFER FOR SALE GOODS WHICH BEAR A COUNTERFEIT TRADEMARK, OR POSSESS A TRADEMARK KNOWING IT TO BE COUNTERFEIT FOR THE PURPOSE OF AFFIXING IT TO ANY GOODS; WITH THE INTENT TO DECEIVE OR DEFRAUD SOME OTHER PERSON OR WITH THE INTENT TO EVADE A LAWFUL RESTRICTION ON THE SALE, RESALE, OFFERING FOR SALE, OR DISTRIBUTION OF GOODS, MANUFACTURE, DISTRIBUTE, SELL, OR OFFER FOR SALE GOODS WHICH BEAR A COUNTERFEIT TRADEMARK, OR POSSESS A TRADEMARK KNOWING IT TO BE COUNTERFEIT FOR THE PURPOSE OF AFFIXING IT TO ANY GOODS, AND THE RETAIL VALUE OF ALL SUCH GOODS BEARING COUNTERFEIT TRADEMARKS EXCEEDED ONE THOUSAND DOLLARS; FOR COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN, KNOWINGLY ADVERTISE OR OFFER FOR SALE, RESALE, OR RENTAL, OR SELL, RESELL, OR RENT, OR POSSESS FOR SUCH PURPOSES, A RECORDING THE COVER, BOX, JACKET OR LABEL OF WHICH DID NOT CLEARLY AND CONSPICUOUSLY DISCLOSE THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER OR THE NAME OF THE PERFORMER OR PRINCIPAL ARTIST. THE OMISSION OF THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER, OR THE OMISSION OF THE NAME OF THE PERFORMER OR PRINCIPAL ARTIST, OR THE OMISSION OF BOTH, SHALL CONSTITUTE THE FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING; WILLFULLY ATTEMPT TO EVADE/DEFEAT A NEW YORK STATE TAX IMPOSED UNDER ARTICLE 20, OF THE NEW YORK STATE TAX LAW BY KNOWINGLY POSSESSING, FOR THE PURPOSES OF SALE, UNSTAMPED OR UNLAWFULLY STAMPED CIGARETTES; POSSESSED OR TRANSPORTED FOR THE PURPOSE OF SALE UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES SUBJECT TO TAX, WITHOUT BEING AN AGENT SO AUTHORIZED BY THE TAX COMMISSIONER; NOT BEING AN AGENT AUTHORIZED BY THE COMMISSIONER OF FINANCE, WHO POSSESSES OR TRANSPORTS FOR THE PURPOSE OF SALE ANY UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES SUBJECT TO TAX UNDER THE NEW YORK CITY ADMINISTRATIVE CODE CHAPTER 13, OR WHO SELLS OR OFFERS FOR SALE UNSTAMPED OR UNLAWFULLY STAMPED PACKAGES OF CIGARETTES; WILLFULLY ATTEMPT TO EVADE/DEFEAT A NEW YORK CITY TAX IMPOSED UNDER ARTICLE 13 OF THE NEW YORK CITY ADMINISTRATIVE CODE OR PAYMENT THEREOF BY POSSESSING UNTAXED OR UNSTAMPED CIGARETTES.

THE SOURCE OF DEPONENT'S INFORMATION AND THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

2/10/05 12:49:49 PM

912 644 5948 P. 03/05

SCMPD FINANCIAL CRIMES

FEB-10-2005 12:42

Continued from Previous Page (P2) PETER THOMAS

DEPONENT IS INFORMED BY POLICE OFFICER DAVID TERREL OF THE 77 COMMAND THAT AT THE FIRST ABOVE TIME AND PLACE, THE DEFENDANT'S STORE, THE INFORMANT ASKED THE DEFENDANT IF THE DEFENDANT WANTED TO PURCHASE A STOLEN X-BOX ALONG WITH 4 VIDEO GAMES UPON WHICH THE DEFENDANT GAVE THE INFORMANT \$31 FOR THE X-BOX AND 4 VIDEO GAMES.

DEPONENT FURTHER STATES THAT A SEARCH WARRANT WAS EXECUTED TO SEARCH THE ABOVE LOCATION AT THE SECOND ABOVE TIME, UPON WHICH THE DEPONENT CONFISCATED 1,599 DVD'S, 322 CD'S, EMPTY CD CASES IN ADDITION TO BLANK CD'S. DEPONENT FURTHER STATES THAT DEPONENT CONFISCATED TWO COMPUTERS, ONE CONTAINING 2 DVD DRIVES AND THE OTHER CONTAINING 2 DVD DRIVES.

DEPONENT FURTHER STATES THAT HE EXAMINED THE MERCHANDISE THAT WAS SEIZED FROM THE DEFENDANT, SPECIFICALLY BOTH THE CD'S AND THE DVD'S AND DETERMINED THAT THE MERCHANDISE WAS COUNTERFEIT IN THAT LEGITIMATE DISCS USUALLY CONTAIN PICTURES OF THE RECORDING GROUP OR ARTIST AND THE ONES SEIZED CONTAINED NO PICTURES OR ONLY PRIMITIVE GRAPHICS, AND THAT MANY OF THE DISCS LIST UNFAMILIAR COMPANY NAMES OF ALLEGED MANUFACTURERS, DISTRIBUTORS, LIST FICTIONOUS NAMES, OR LIST NO NAMES AND/OR ADDRESSES WHEREAS LEGITIMATE DISCS PROVIDE SUCH INFORMATION AND THAT THE DISCS SEIZED HAD INFERIOR PACKAGING QUALITY WHEN COMPARED WITH AUTHENTIC DISCS. FEW OF THE SEIZED DISCS EMPLOYED MULTI-COLOR PRINTING AND ART WORK AND MANY HAD NO DETAIL AND SIMPLY HAD A TYPEWRITTEN OR CRUDELY PRINTED LIST OF PERFORMERS EMBODIED WITHIN, AS COMPARED TO THE LEGITIMATE PRODUCT.

DEPONENT FURTHER STATES THAT INFORMANT'S BASIS FOR THAT CONCLUSION IS THE TRAINING THAT DEPONENT RECEIVED FROM THE COMPANIES THAT HOLD THE GENUINE TRADEMARKS, THE EXPERIENCE THAT DEPONENT GAINED FROM PREVIOUS ARRESTS INFORMANT MADE FOR TRADEMARK COUNTERFEITING AND FROM THE SUPPORTING DEPOSITION OF GENE MALONEY, A REPRESENTATIVE OF THE MOTION PICTURE ASSOCIATION OF AMERICA.

DEPONENT FURTHER STATES, THAT, AT THE ABOVE TIME AND PLACE INFORMANT OBSERVED THE DEFENDANT IN POSSESSION OF AN EXCESS OF 400 PACKAGES OF CIGARETTES THAT DID NOT BEAR THE REQUIRED NEW YORK STATE AND NEW YORK CITY TAX STAMPS, IN THAT INFORMANT RECOVERED THOSE PACKAGES FROM THE ABOVE LOCATION.

DEPONENT FURTHER STATES THAT HE HAS HAD PROFESSIONAL TRAINING AS AN EXCISE TAX INVESTIGATOR IN THE IDENTIFICATION AND RECOGNITION OF TAX STAMPS, HAS PREVIOUSLY MADE ARREST FOR THE CRIMINAL POSSESSION OF CIGARETTE AND TOBACCO PRODUCTS THAT HAVE NOT CONTAINED THE REQUIRED TAX STAMPS, HAS PREVIOUSLY SEIZED FALSE TAX STAMPS AND HAS SEIZED PRODUCTS THAT HAVE BEEN UNLAWFULLY STAMPED FOR TAX EVASION PURPOSES, AND BY PROFESSIONAL TRAINING AND EXPERIENCE AS AN EXCISE TAX INVESTIGATOR, IS FAMILIAR WITH THE COMMON METHODS OF EVADING OR DEFEATING CIGARETTE AND TOBACCO TAXES, AND IN INFORMANT'S OPINION THE TAX STAMPS CONTAINED ON THE PRODUCTS IN THIS CASE WERE NOT LAWFUL TAX STAMPS REQUIRED BY NEW YORK STATE LAW.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

02/10/05 *P. Thomas*
DATE SIGNATURE

2/10/05 12:49:49 PM

912 644 5948 P.04/05

SCMPD FINANCIAL CRIMES

FEB-10-2005 12:42

Falseified testimony which finds defendant at location where warrant is executed at 850 PM

THE PEOPLE OF THE STATE OF NEW YORK

-against-

PETER THOMAS

Defendant.

PEOPLE'S RESPONSE TO
DEFENSE MOTION AND
MEMORANDUM OF LAW
TO DISMISS THE
INDICTMENT PURSUANT
TO C.P.L. §§ 30.20 & 30.30

INDICTMENT
NO. 1049/2005

CRIMINAL TERM ARRANGED
SUPREME COURT KINGS
2005 AUG - 3 PM 1:18

VALERIE L. FORBES, an attorney admitted to practice in the

State of New York and an Assistant District Attorney in the County of Kings, affirms the

following to be true under the penalties of perjury:

1. I submit this affirmation in opposition to defendant's motion, dated July 18, 2004, to dismiss the indictment under Supreme Court indictment number 1049/2005 pursuant to Criminal Procedure Law § 30.30.

2. Unless otherwise indicated, I affirm the following statements on information and belief, based on the records and files of the Kings County District Attorney's Office; conversations with assistant district attorney Maria Sciortino, and the files of the Kings County Supreme Court.

3. On February 9, 2005, at about 12:50 p.m., inside of 526 Ralph Avenue, Brooklyn, the defendant offered police officer David Terrell from the 77 Precinct (acting in an undercover capacity) \$31 cash United States Currency in exchange for a video box that the officer told the defendant was stolen. Later that day, at approximately 10:50 p.m., police officers from the 77 Precinct executed a search warrant at the location and

recovered 1,599 counterfeit DVDs and 320 counterfeit CDs. The officers also

WARRANT WAS NOW EXECUTED AT 10:50 P.M., WHICH, IRONICALLY IS THE NEW ARREST TIME OF DEFENDANT - ONLY TO COVER UP A 10 PM POLICE BEATING. THE PEOPLE, IN AVOIDING THE BEATING WITH THIS 10:50 PM ARREST HAS ALSO PUT THE WARRANT'S EXECUTION OUTSIDE THE REQUIRED 6AM - 9PM TIMEFRAME.

The enclosed
Police Reports
indicate a complete
Purchase, as does
the WARRANT
APPLICATION

Bonus Exhibit #4
2 pages

confiscated: one (1) Hewlett Packard Officejet printer; two (2) computer towers, one containing eight (8) DVD drives and the other, two (2) DVD drives; numerous blank CDs and empty CD cases plus 28 cartons and 24 packs of untaxed cigarettes.

4. On February 9, 2005, as a result of these events, the defendant was arrested and charged with, inter alia, Failure to Disclose the Origin of a Recording in the First Degree (P.L. § 275.40).

5. On February 18, 2005, the defendant was indicted under number 1049/2005. The indictment charged the defendant with several charges including Trademark Counterfeiting in the Second Degree (P.L. § 165.72).

6. On March 18, 2005, the indictment was filed with the Supreme Court clerk along with a statement of the People's readiness pursuant to C.P.L. § 30.30.

7. On April 5, 2005, the defendant was arraigned on the indictment in Part 30. The People announced their readiness for trial on the record and, at the defendant's request, the Legal Aid Society was relieved from representing the defendant who was permitted to represent himself and attorney Spencer Leeds from the 18-B Panel was appointed by the court to be his legal advisor.

8. Also on April 5, 2005, the defendant filed a *Pro Se* 190.50 Motion to dismiss the Indictment based upon a violation of the defendant's right to testify in the Grand Jury. The Court instructed the People to file their response by April 13, 2005 and the case was adjourned to April 20 for a decision on the defendant's motion.

9. On April 20, 2005, the Court denied the defendant's motion to dismiss the indictment pursuant to C.P.L. § 190.50. That same day, the defendant served, upon the People, an omnibus motion in which, among other things, the defendant demanded discovery, including inspection of the grand jury minutes, and sought to suppress the